

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
)
v.) No. 04-0329-01-CR-FJG
)
)
)
NICHOLAS G. PEREZ,)
)
)
 Defendant.)

AMENDED ORDER

Nicholas Perez has filed a Motion to Reduce Sentence pursuant to 18 U.S.C. § 3582(c)(2) (Doc. No. 27).

On October 7, 2004, Perez was indicted for two violations of federal drug law: conspiracy to distribute and possession with intent to distribute 50 grams or more of methamphetamine, pursuant to 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846 (Doc. No. 12). Perez accepted the government's plea agreement and was sentenced before this Court on January 27, 2005. Perez was sentenced to 121 months' imprisonment, one month longer than the statutory minimum of 120 months. On October 5, 2010, the Court denied Perez's Motion for Writ of Mandamus to Review Sentence (Doc. No. 26).

In the instant Motion, Perez fails to identify an amendment to the Sentencing Guidelines retroactive to a final criminal case that would authorize a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(2).¹ Under controlling Eighth Circuit law, this

¹ In the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing

Court lacks jurisdiction to reduce Perez's sentence absent an applicable retroactive amendment. See U.S. v. Peters, 524 F.3d 905, 907 (8th Cir. 2008).

As to Perez's challenge to the lack of evidence supporting the quantity of methamphetamine listed in the plea agreement, the Court finds the arguments set forth by the government present a thorough legal and factual analysis and hereby adopts by reference such analysis and conclusions.

Based on the foregoing, Perez's Motion to Reduce Sentence pursuant to 18 U.S.C. § 3582(c)(2) (Doc. 27) is hereby **DENIED**.

IT IS SO ORDERED.

Date: 04/19/11
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge

Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission. 18 U.S.C. § 3582(c)(2).